

IN THE COURT OF
APPEAL AT
NYERI

(CORAM: JAMILA MOHAMMED, KIMARU & MUCHELULE, JJ.A.)

CIVIL APPEAL NO. 80 OF 2019

BETWEEN

**ST. LAVINA MEDICAL & LABORATORY
SERVICES LIMITED.....APPELLANT**

AND

**THE NATIONAL HOSPITAL
INSURANCE
FUND BOARD OF MANAGEMENT.....RESPONDENT**

*[An appeal arising from the judgment and decree of the High
Court of Kenya at Meru (F. Gikonyo, J.) delivered on 9th of May
2018*

in

Meru High Court Civil Suit No. 15 of 2014]

JUDGMENT OF THE COURT

Background

- 1) This appeal arises from the judgment of the High Court of Kenya at Meru (F. Gikonyo, J.), which dismissed the claim by **St. Lavina Medical & Laboratory Services Limited** (the appellant/the Facility) for sums allegedly due under a medical services contract. The High Court awarded costs to **The National Hospital Insurance Fund Board of Management** (the respondent).

- 2) The appellant contends that it duly rendered healthcare services under the contract in respect of the **Civil Servants and Disciplined Services Medical Scheme**, yet was unlawfully denied payment. The respondent maintains that the contract was *void ab initio* due to illegality, lack of proper licensing, and conflict of interest.
- 3) The appellant's Memorandum of Appeal asserts that the High Court misapplied the law by finding the contract void for illegality despite evidence that incorporation did not alter ownership or control; erroneously held that there was no proof of transfer of business or succession; erred in law by finding that the appellant was disqualified from contracting due to alleged conflict of interest; relied on extraneous allegations against one **Joab Indeche Wakhu** not joined to the proceedings; failed to appreciate that licensing by the Kenya Medical Practitioners and Dentists Board (KMPDB) was not mandatory at the time of contracting and was only introduced in July 2012; erred in disregarding unrebutted evidence that the appellant's operations complied with statutory requirements; and that the High Court rendered a decision contrary to the law and the weight of evidence.
- 4) The appellant seeks to set aside the High Court judgment and obtain payment of Kshs.9,431,362 as outstanding sums for services rendered under the terms of the contract together with interest and costs.

Submissions by Counsel

5) At the hearing of the appeal, both parties were represented by counsel.

Learned counsel, **Mr. Kariuki** appeared for the appellant and relied on his written submissions. Counsel submitted that incorporation of the appellant company did not extinguish contractual rights, and the trial court wrongly treated the entity as a legal stranger. Reliance was placed on **Kenya Commercial Bank v Suntra Investment Bank Ltd [2015]**

eKLR in support of this proposition. Counsel further submitted that no credible evidence established illegality or fraud. That the Facility's accreditation was lawfully obtained, and subsequent licensing requirements were complied with. Further, that allegations of conflict of interest were speculative and unproven. Counsel asserted that the respondent failed to join the alleged officer (Joab Indech Wakhu) as a party, contrary to principles of fair trial; and that even if illegality were found, the principle of *quantum meruit* entitled the appellant to payment for services rendered.

6) Learned counsel **Mr. Nyboma** for the respondent highlighted his written submissions. Counsel relied on the doctrine of illegality and *ex turpi causa non oritur actio*, arguing that the Facility lacked the requisite licence under the Medical Practitioners and Dentists Act at

the time of contracting, rendering the contract void. Counsel relied on the decision

of **Mapis Investment (K) Ltd v Kenya Railways Corporation [2006]**

eKLR in where the court emphasized the maxim *ex turpi causa non oritur actio*, that no action can arise from an illegal contract. Counsel further submitted that the appellant, incorporated after execution, lacked privity and could not enforce the contract between the parties.

Counsel relied on the decision of **Agricultural Finance Corporation v Lengetia Limited**

[1985] KLR 765, a case that underscores the principle of privity of contract.

7) Counsel further submitted that a conflict of interest existed as one of the Facility's owners, Mr. Joab Indech Wakhu and his wife, Maureen Anjeline Malo both linked to the Facility and the accreditation process contrary to the Public Officers Ethics Act and the Leadership and Integrity Act. Counsel cited the decision of **Nyaga Cottolengo Francis v**

Pius Mwaniki Karani [2017] eKLR in support of this proposition.

Counsel asserted that the trial court properly invoked the decision of **Odd**

Jobs v Mubia (1970) EA 476 to consider issues arising from evidence

even if not expressly pleaded. Counsel further submitted that similar findings of illegality had been reached in the decision of **NHIF Board**

of

Management v Joab Indeche Wakhu, Civil Appeal No. 54 of 2018, a

case involving the same persons and the disputed contractual arrangements. Counsel urged that the appeal be dismissed with costs.

Determination

8) We have considered the record, the submissions by counsel, the authorities cited and the law. This is a first appeal and as stated by this Court in **Ryce Motors Limited v Jonathan Kiprono Ruto & another**

[2016] eKLR Civil Appeal No. 271 of 2009:

“Our primary role as a first appellate court is to re-evaluate, re-assess and re-analyse the evidence on the record and thereafter determine whether or not the conclusions reached by the learned trial Judge are correct.”

9) We discern the central issue in this appeal to be whether the contract entered in January 2012 was valid and enforceable.

10) On the legality of the contract and licensing, the record confirms that the Facility was not licensed by KMPDB at the time of contracting. Licensing was only secured months later. Compliance after execution cannot cure an illegality. Contracts founded on illegality are void *ab initio* (**Macfoy v UAC Ltd [1961] 3 All ER 1169; Patel v Singh (No. 2) [1987] KLR 585**).

11) On the issue of conflict of interest, evidence established that an employee of the respondent held an interest in the appellant during accreditation, in breach of statutory and ethical standards. Such a

conflict compromises transparency and renders the contract unenforceable. In the foundational case of **Holman v Johnson** **(1775) 1**

Cowp 341, Lord Mansfield CJ underscored the core of this principle, declaring that **“no court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.”** This timeless rule ensures that courts neither validate nor inadvertently incentivize illegal conduct, particularly where such conduct undermines the rule of law or the integrity of public policy. The trial court did not therefore err in declining to enforce a contract that was tainted with illegality, and this Court sees no basis to interfere with that determination.

12) On privity of contract, from the record, the appellant was incorporated after execution of the contract. No evidence of assignment or novation was adduced. Under the doctrine of privity

(Agricultural Finance

Corporation v Lengetia Limited (supra), the appellant lacked standing

to enforce the agreement.

13) On *quantum meruit*, the principle cannot override the doctrine of illegality. Courts cannot aid enforcement of illegal transactions

(Scott v

Brown Doering McNab & Co. (3) [1892] 2 QB 724).

14) In the circumstances, we find that the High Court correctly held that the contract between the parties was *void ab initio* due to illegality, lack of licensing, and conflict of interest. The High Court did not

therefore err in finding that the appellant lacked standing to enforce the contract.

15) The upshot is that the appeal is dismissed for lack of merit.

16) The appellant shall bear the costs of this appeal and of the High Court.

17) Orders accordingly.

Dated and delivered at Nyeri this 3rd day of October, 2025

JAMILA MOHAMMED

.....
JUDGE OF APPEAL

L. KIMARU

.....
JUDGE OF APPEAL

A. O. MUCHELULE

.....
JUDGE OF APPEAL

I certify that this is a
true copy of the original

Signed

DEPUTY REGISTRAR

